

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

GELOCK TRANSFER LINE, INC.,
HASTINGS TRUCK COMPANY,
INCORPORATED¹

Employers

and

CASE 7-RC-22388

LOCAL 324, A, B, C & D, INTERNATIONAL
UNION OF OPERATING ENGINEERS, AFL-CIO

Petitioner

APPEARANCES:

Nathan D. Plantinga, Attorney, of Grand Rapids, Michigan, for Employer Gelock.
Michael Stroster, Attorney, of Grand Rapids, Michigan, for Employer Hastings.
J. Douglas Korney, Attorney, of Bingham Farms, Michigan, for the Petitioner.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:²

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.³

¹ The name of Hastings appears as amended at the hearing.

² Gelock submitted a brief, which was carefully considered.

³ On the first day of hearing, January 29, 2003, the hearing officer adjourned the hearing to a later date, over the objection of Gelock, in order to ensure due process for all parties. No representative of Hastings

2. The Employers are engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employers.

4. A question affecting commerce exists concerning the representation of certain employees of the Employers within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Petitioner seeks a unit of all full-time and regular part-time equipment operators, mechanics, and truck drivers employed by Gelock and Hastings as single or joint employers. The Employers contend that they are not a single or joint employers and that, in any case, the three job classifications do not share a sufficient community of interest to be included in a single unit. I find that based on common management and ownership, centralized control of labor relations, and interrelated operations, Gelock and Hastings are a single employer. I further find that the petitioned-for unit is appropriate because the employees share a sufficient community of interest, which is not undermined by a past bargaining history that ended in 1995.

Gelock moves and installs heavy industrial machinery and equipment and employs a mechanic, estimators, salespeople (although not presently), office clerical employees, ironworkers, and a dispatcher.⁴ The ironworkers are represented by Ironworkers Local 340. Hastings is engaged in the interstate and intrastate hauling of heavy machinery and equipment, and employs three truck drivers and six crane operators.

Gelock and Hastings are separately incorporated entities. They are both wholly owned by the Van Dam family; Gerald, the father, and Richard, Randy, and John, the sons. The father and sons serve as the board of directors for each of the companies. Richard Van Dam, as the general manager for corporate affairs for the Van Dam family, negotiates contracts for both companies for general liability insurance and employee health insurance. Randy Van Dam, who is the president of Gelock, is responsible for the day-to-day operations of both companies. Hastings does not employ a general manager. Randy Van Dam negotiates the collective bargaining agreements with Ironworkers Local 340 covering the

appeared on that date. No prejudice was suffered by any party and I affirm the hearing officer's ruling in this regard.

⁴ The parties stipulated that any appropriate unit would exclude dispatchers, estimators, office clerical employees, salespeople, all other employees currently represented by a labor organization, and guards and supervisors as defined in the Act.

ironworkers employed by Gelock. He is responsible for the hiring and firing of employees for both companies; discipline can be issued by Randy, Richard, or Gerald Van Dam.

Hastings and Gelock share an office at 450 Market Street SW, in Grand Rapids, Michigan.⁵ Business records for both companies are stored at that office. Gelock's office clerical employees provide services for Hastings. The companies have separate telephone lines, but the same person answers the telephone for each company. They share accounting and bookkeeping services. Sales for both companies are handled by the same personnel. About 80% of Hastings' business involves providing hauling services to Gelock, for which it is paid. The other 20% of Hastings' business is for customers other than Gelock, but both companies have several common customers.

Hastings' truck drivers and crane operators, and Gelock's dispatcher, mechanic, and ironworkers all report to a warehouse at 550 Market Street SW, in Grand Rapids with a sign that reads "Gelock Heavy Movers Warehouse."⁶ The warehouse contains the dispatcher's office, an employee locker room, vehicle bays, and a yard. Gelock owns some cranes and leases the rest, as well as some tractors. There are a total of 12 cranes; 2 are used inside the warehouse. Hastings owns some trailers and leases tractors; forklifts and lifting gantry are either owned or leased, but operated by Gelock ironworkers. All of the cranes and hi-los have signs that identify Gelock. Of the 13 tractors, 7 have signs that identify Gelock Heavy Movers, 4 have signs that identify Gelock Heavy Movers leased to Hastings Truck, and 1 says Hastings Kalamazoo. Of the 40 to 50 trailers, 2 identify Gelock, 1 says Gelock Heavy Movers, and the rest are unlettered. All the equipment is kept at the warehouse or parked in the lot.

The dispatcher dispatches all the truck drivers, crane operators, and ironworkers. A work schedule for those employees is posted outside the dispatcher's office. The general starting time is 7:00 a.m., but they may begin work as early as 6:00 a.m. or as late as 8:00 a.m. The mechanic, who also reports to the dispatcher, works a regular schedule from 7:00 a.m. to 5:00 p.m.

The crane operators work at customer jobsites operating the cranes to move equipment and machinery. The self-propelled cranes are driven to the job by the crane operators. The other cranes are transported by tractor-trailers driven by either the crane operators or truck drivers. Crane operators may also transport hi-los to a jobsite on a tractor-trailer. The heavy cranes require the use of

⁵ Although Hastings gave its address as 738 East Walnut, Kalamazoo, Michigan, it does not operate an office at that location and none of its employees work at the warehouse facility located at that address.

⁶ The name "Gelock Heavy Movers" was referred to several times during the hearing, but there is no explanation on the record as to its relationship to the Employers.

counterweights which are transported to the job by a truck driver, referred to as an oiler in that situation. The oiler remains on the job to assist the crane operator in setting up the crane and providing signaling assistance. All three drivers serve as oilers. The cranes inside the warehouse are used to move equipment and load and unload trucks. Those cranes are operated by the crane operators or truck drivers.

The crane operators also work on rigging crews with the ironworkers about 15% of their time, assisting in the installation of machinery at customer locations. Sometimes a truck driver will also be part of a rigging crew. Crane operators and drivers operate hi-los. The drivers spend about 20% of their time working with the crane operators, 60% of their time working with the rigging crews, and the remainder hauling equipment and machinery for customers. Some of the hauling of machinery is to out-of-state locations and requires one or two overnight stays. The mechanic services the tractors, trailers, forklifts, and cranes, either at the warehouse or on the jobsite, if necessary. He helps the crane operators and drivers depart for their jobs in the morning by assuring that equipment is in working order. The drivers, crane operators, and ironworkers will contact the mechanic if they encounter a problem with a piece of equipment while on a jobsite. The employees are all provided with a list entitled "Gelock employees" that lists their home telephone, pager, and Nextel numbers.

All the petitioned-for employees are paid weekly. The checks are left in the drawer of a desk located in the locker room. The crane operators earn \$23.50/hour for operation of the heavy cranes and \$22.50/hour for the lighter cranes. The mechanic earns \$20.00/hour. The drivers are paid by the hour if they drive less than 100 aerial miles or if their load is greater than 50,000 pounds; \$18.00/hour for a trailer without a jeep or dolly, and \$21.00/hour for a trailer with a jeep or dolly. They are paid mileage if they drive more than 100 aerial miles and the load is less than 50,000 pounds. Regardless, they are paid by the hour for unloading work. All the petitioned-for employees enjoy the same benefits: health and dental insurance, 401(k), paid holidays, and paid vacations. Employees request time off from Richard or Randy Van Dam. The dental cards provided to the employees list Gelock Heavy Movers as the employer; the health cards list Gelock Transfer Line. Various gas and credit cards issued to the employees name either Gelock Heavy Movers or Gelock Transfer Line.

Crane operators are provided by the dispatcher with a crane service agreement on which to record their hours and the name of the oiler when one is used; the header on the agreement lists Gelock Heavy Movers. The rigging crews are provided a Gelock work order which lists the employees assigned to the job. The drivers are required to fill out a load sheet and log book on over-the-road trips. The mechanic fills out a form for each job he completes. No license is required to operate a crane. All the employees possess commercial driver licenses.

The mechanic is certified by the State of Michigan as a heavy-duty truck mechanic. One of the crane operators was previously a truck driver for the Employers, and possibly a mechanic earlier.

Prior to 1993, Gelock employed truck drivers who were represented by Teamsters Local 406 in a unit with mechanics, salespeople, and bookkeepers. Until 1995, Gelock employed crane operators who were represented by the Petitioner. Gelock employed at that time, and continues to employ, ironworkers. Hastings used to operate in Kalamazoo and its truck drivers were represented by Teamsters Local 406 until 1989. Hastings also employed ironworkers at that time, represented by Ironworkers Local 340; it is not clear when Hastings ceased employing ironworkers. In 1976, Hastings purchased a company in Battle Creek that was engaged in the hauling of heavy machinery, construction equipment, and household goods. Other than the common ownership by the Van Dam family, the record does not disclose the relationship between Gelock and Hastings during the period prior to 1995; nor does the record disclose when Hastings moved its operations to Grand Rapids.

Employing Entity

A single employer is found in situations where apparently separate entities operate as an integrated enterprise. The principal factors considered in determining single employer status are interrelation of operations, centralized control of labor relations, common management, and common ownership or financial control. *NLRB v. Browning Ferris Industries*, 691 F.2d 1117 (3d. Cir. 1982). While no single criterion is controlling, the first three, particularly centralized control of labor relations, are more critical than common ownership or financial control. *RBE Electronics of S.D.*, 320 NLRB 80 (1995).

Gelock and Hastings are commonly owned by the Van Dam family. The operations of the two companies are highly integrated. They share an office and warehouse area. The office and sales employees of Gelock perform services for Hastings. Gelock's mechanic services the equipment used by Hastings. The crane operators and truck drivers employed by Hastings work on rigging crews with the ironworkers employed by Gelock. Hastings' crane operators operate the cranes owned or leased by Gelock. Both companies share common management. The same Van Dam family members comprise the board of directors of each company. Randy Van Dam, president of Gelock, is responsible for the daily operations of both companies. Most importantly, labor relations for both companies is handled by the same individuals. The hiring, firing, and disciplining of employees is done primarily by Randy Van Dam, and to some extent Richard and Gerald Van Dam. The collective bargaining agreement between Gelock and Ironworkers Local 340

is negotiated by Randy Van Dam. All the employees of both companies, except for the ironworkers, enjoy the same benefits.

The prior bargaining history of Hastings and Gelock is not determinative of single employer status. During the period when certain employees of Hastings and Gelock were separately represented, the companies operated out of different locations. Consequently, I conclude that the evidence establishes that Hastings and Gelock constitute a single employer. However, a single employer finding still requires an inquiry into the appropriateness of the petitioned-for unit. *Peter Kiewit Sons' Co.*, 231 NLRB 76 (1977).

Appropriate Unit

The Act does not require that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act requires only that the petitioned-for unit be appropriate. *Transerv Systems*, 311 NLRB 766 (1993); *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950). A union is not required to seek representation in the most appropriate unit. *Bamberger's Paramus*, 151 NLRB 748 (1965). Additionally, a petitioner's desires as to a unit is a relevant consideration. *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964). In determining whether a particular unit is appropriate, the Board determines whether the employees share a community of interest. *Kalamazoo Paper Box Co.*, 136 NLRB 134 (1962). If the unit sought by the petitioner is appropriate, the inquiry ends.

In determining whether the employees in a proposed unit share a community of interest separate and apart from employees outside the unit, the Board considers certain criteria including wages, hours, and benefits; supervision; qualifications, training, and skills; job functions; degree of contact; integration of work functions; and interchange. *Home Depot USA*, 331 NLRB 1289 (2000). The crane operators, truck drivers, and mechanic share a sufficient community of interest to be included in a single unit.

All three employee groups are supervised directly by the dispatcher and, in terms of overall operations, by Randy Van Dam. They all report to the same facility at the start of the work day and share a locker room. The crane operators and drivers often work together in the transportation and operation of the cranes at customer jobsites, with the drivers serving as oilers, or on rigging crews. The mechanic assists the crane operators and truck drivers in the mornings to assure that all equipment is in working order. The mechanic also communicates with the other unit employees during the work day concerning malfunctioning equipment and may visit jobsites to effect repairs. The crane operators and drivers operate the cranes inside the warehouse. The crane operators or drivers drive tractors to

transport cranes to jobsites. Both the crane operators and drivers operate hi-los. All the employees possess commercial driver licenses.

The hourly wage rates of the three employee groups fall within a close range and all enjoy the same benefits. They work similar hours, except when the drivers haul machinery over-the-road, and under certain circumstances the drivers may be paid on a mileage basis. However, the drivers spend the majority of their time working with the crane operators or on rigging crews and only a small percentage of their income derives from mileage payments.

Consequently, I find that the three employee groups share common supervision; similar wages, hours, and benefits; overlapping of some qualifications and skills; and, a high degree of contact and functional integration. Because there is only one mechanic, he would be deprived of the opportunity for union representation if excluded from the unit.

Prior bargaining history is given substantial weight in determining the appropriateness of a bargaining unit. This policy derives from the statutory objective of stability in industrial relations. The Board balances the goals of employee free choice and bargaining stability. The Employers' crane operators have been unrepresented since 1995 and were, at that time, employed by Gelock. Truck drivers employed by Gelock were last represented in 1993 and truck drivers employed by Hastings were last represented in 1989. Given that distant history, the placement of crane operators and truck drivers in the same unit would have no significant impact on the stability of the Employers' industrial relations. Although the Board is reluctant to disturb established, or existing, bargaining units, there are no existing bargaining units relevant to the petitioned-for employees. A hiatus of 8 to 10 years precludes the prior bargaining history from being controlling in a unit determination. *Coca-Cola Bottling Co. of Wisconsin*, 310 NLRB 844 (1993).

5. Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time equipment operators, mechanics, and truck drivers employed by the Employers at or out of their facility located at 550 Market Street SW, Grand Rapids, Michigan; but excluding dispatchers, estimators, office clerical employees, salespeople, all other employees currently represented by a labor organization, guards and supervisors as defined in the Act.⁷

⁷ Although it appears from the record that crane operators are the only type of equipment operators employed by the Employer, the petition sought equipment operators and no party objected to that classification designation. While the petition describes the unit employees to be employed at the 450

Those eligible to vote shall vote as set forth in the Direction of Election attached hereto.

Dated at Detroit, Michigan this 19th day of March 2003.

(SEAL)

Stephen M. Glasser
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Classifications

177 1642
401 7550
420 1783

Market Street SW address, the record establishes that they work at or out of the 550 Market Street SW facility.